

**INTERGOVERNMENTAL AGREEMENT  
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)  
BETWEEN  
THE NOOKSACK TRIBE AND THE WASHINGTON STATE DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

**I. AUTHORITY**

**THIS AGREEMENT** is entered into between the Nooksack Tribe (hereinafter the Tribe) and the Washington State Department of Social and Health Services, (hereinafter the Department) pursuant to their respective governmental authorities. The Nooksack Tribe's Business Committee is authorized to enter into this Agreement under Article VI., of the Nooksack Tribe's Constitution. The Interlocal Cooperation Act, RCW 39.34, permits any State agency to enter into a cooperative agreement with an Indian tribe for their mutual advantage and cooperation. RCW 74.080A.040 authorizes the State to coordinate and cooperate with eligible Indian tribes that elect to operate a Tribal TANF program as provided for in P.L. 104-193 and to transfer a fair and equitable share of maintenance of effort funds to the eligible Indian tribe. The Department and the Tribe desire to enter into this Agreement pursuant to their respective authorities, which include financial assistance and employment and training services to eligible, needy families in order to fulfill the purpose set out herein. It is the intention of the parties that this Agreement be liberally construed to effectuate its intent and purposes.

The Department and the Tribe each have jurisdiction over domestic relations, including providing comprehensive welfare reform services and additional supportive services.

The Department and the Tribe recognize that the Tribe has a compelling interest as a sovereign in promoting and maintaining the governmental and cultural integrity of the Tribe. The parties recognize their respective sovereignty and enter into this Agreement consistent with the government-to-government relationships affirmed by the Centennial Accord of 1989.

Section 412 of the Social Security Act requires payment of TANF funds to Indian Nations with approved TANF plans. The Tribe will provide services under its approved TANF plan in a manner that best serves the needs of its service area and population. The parties recognize that their ability to serve TANF families shall be enhanced with the establishment of a process and procedures for the transfer and exchange of services. Coordinating the transfer of identified cases from the Department to the Tribe shall assist in ensuring that tribal families receive uninterrupted services.

## **II. PURPOSE**

The Department and the Tribe enter into this Agreement to transfer a fair and equitable amount of state maintenance of effort funds to the Tribe and to work in partnership to coordinate state and tribal benefits and services. This Agreement is consistent with, and is intended to further, the declared national policy of moving recipients into work and time-limited assistance. At the same time, this Agreement also protects the best interest of families and children by providing an effective and efficient way by which these families and children may be maintained from the resources available to both the Department and the Tribe. The parties recognize that their ability to serve TANF families will be enhanced with the establishment of a process and procedure for the transfer and exchange of services.

## **III. DEFINITIONS**

The Department and the Tribe agree for the purposes of this Agreement to the following definitions.

1. **Retrocession:** Means the process by which an Indian nation voluntarily terminates and cedes back (or returns) a tribal TANF program to the appropriate state and federal entities, consistent with federal regulations. Retrocession includes the voluntary relinquishment of the authority to obligate previously awarded state and federal funds before that authority otherwise expires.
2. **State Maintenance of Effort Funds (MOE):** Federally required expenditures of State funds in programs which fulfill specific Federal requirements and which serve TANF eligible families. Depending upon whether a State meets certain TANF program requirements, the required minimum level of State MOE spending in any fiscal year is 75% or 80% of the State's 1994 spending in certain AFDC related programs.
3. **TANF (Temporary Assistance for Needy Families):** a program authorized by the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PL 104-103) and codified in title IV-A of the Social Security Act operated by states and Indian nations to provide financial assistance and employment and training services to eligible, needy families.
4. **TFAP (TANF Family Assistance Plan):** Means the plan for implementation of the Tribal TANF program under Section 412(b) of the Social Security Act.
5. **Tribal TANF Program:** Means a TANF program developed by an eligible Indian nation, tribal organization, or consortium and approved by the Administration for Children and Families under Section 412 of the Social Security Act.

6. **WorkFirst:** The state's welfare reform program which provides support services and activities to TANF recipients and low-income families so they can find jobs, keep jobs, and become self-sufficient.

#### **IV. THE DEPARTMENT AND THE TRIBE AGREE TO THE FOLLOWING:**

The Department and the Tribe engaged in negotiations to 1) determine the data that would be submitted by the Department to the United States Department of Health and Human Services (hereinafter HHS), from which HHS would determine the Tribe's federal TANF grant amount, and 2) the amount of State MOE funds and other monetary and non-monetary enhancement that would be provided by the Department to assist the Tribe's TANF program.

The Tribe has an approved TFAP, which is incorporated by reference. The effective date of the TFAP is May 1, 2005. Consistent with its TFAP, the Tribe will serve all American Indian and Alaskan Native families residing on the Nooksack reservation and Nooksack tribal members residing in Whatcom County, except for those on the Lummi reservation. In addition, they will serve "Other" American Indian/Alaska Natives families, excluding Lummi tribal members, as agreed to in the Lummi/Nooksack MOU Agreement (see attachment). The Department and the Tribe determined that there were 125 Indian families receiving public assistance benefits in 1994, based on the Tribe's identified service area of Whatcom County. These 125 Indian families include: all Nooksack families in Whatcom County, except for those on the Lummi reservation, and all American Indian/ Alaska Native families living east of the boundary in the MOU, excluding members of the Lummi Nation.

The Department agrees to transfer, in a separate agreement, \$200,000 to the Tribe for one-time start-up and infrastructure costs one month prior to the Tribe's TANF program starting date. The Department agrees to transfer to the Tribe in the first year of this Agreement, in state funds, a total of \$485,893 and \$285,893 for each of the second and third years. The annual amounts will be paid to the Tribe, upon submission of a department voucher (A-19), in four equal payments to be made at the beginning of each calendar quarter, in accordance with the State MOE Payment Schedule, Exhibit A, attached and incorporated. Included within the annual funding stated above, the Department agrees to pay to the Tribe enhanced funding for future employment opportunities of \$200,000 for each of the three years of the Agreement. The total financial commitment during the three years of the Agreement is \$857,679 plus the \$200,000 already paid to the Tribe under a separate agreement for infrastructure and start up costs.

The Department and the Tribe will negotiate a quarterly reconciliation process and methodology for eligible Tribal TANF families identified in the Tribe's federally approved Tribal TANF Plan served by the Department during the

agreement period. Any needed adjustments will be made to each quarterly payment.

The Department and the Tribe will negotiate and establish criteria and outcomes for measurements of success and a mechanism that will enable the Department to know how the Tribe has used the State's MOE funds and the number of eligible families served with the funds, as required by the November 27, 2000 TANF Policy Announcement (No. TANF-ACF-PA-00-4) issued by the U.S. Department of Health and Human Services, and incorporated by reference.

The parties commit to develop the process and procedures for reconciliation, measurements of success and a reporting mechanism for State MOE funds within six months of signing this Agreement.

Based on recent changes to policy, the Department and the Tribe agree to negotiate a data share agreement.

## **V. IMPLEMENTATION AGREEMENTS**

The Department and the Tribe shall develop an Operating Agreement describing the working relationship between the Department of Social & Health Services Region 3 and the Tribe, including procedures for the effective transfer of cases and coordination of services that shall be performed by each party. This Operating Agreement shall also include an Information and Data Sharing Protocol. The protocol shall include provisions identifying State and Tribal confidentiality protections and provisions to ensure that a family receiving assistance under the Tribe's plan may not receive assistance from other state or tribal TANF programs.

The Department, through the Division of Child Support, and the Tribe shall develop a protocol to provide for a mechanism for the Department to bring child support cases in to tribal court. It is the Tribe's goal to develop its own tribal child support program as soon as it is feasible.

## **VI. RESPONSIBILITIES OF THE TRIBE**

The Tribe shall provide TANF services as described in its federally approved TANF Plan. The Tribe shall comply with all applicable federal regulations governing the use of federal and state funds as they pertain to tribal governments. The Department and the Tribe agree the Tribe will provide to the Department within thirty days of receipt all Federal audits of the Tribal TANF program.

In the event the Tribe fails to comply with the terms and conditions of this Agreement and all applicable federal regulations governing the use of federal and state funds as they pertain to tribal governments, this may result in nonpayment, an overpayment finding collectable by DSHS, and/or termination of

the Agreement. Should DSHS find the Tribe to be out of compliance, DSHS shall notify the Tribe in writing of such finding and the Tribe shall be given reasonable time in which to cure the noncompliance. The Tribe agrees to allow DSHS or its designee access to its program files for review and audit of State MOE funds for the limited purpose of determining compliance.

Consistent with its federally approved TFAP, the Tribe shall make the final determination of tribal membership of families applying for Tribal TANF services. The Tribe shall also determine whether such families meet the eligibility criteria for Tribal TANF services.

The Tribe shall provide the Department with a list and description of the current eligibility for Tribal TANF services. If and when changes or revisions of such eligibility occur, the Tribe shall promptly inform the Department of these changes or revisions.

If the Tribe requests an amendment to its TFAP which would have a significant financial impact on the Department, the Tribe shall also notify the Department of such request and provide a copy of the proposed amendment. The Department and the Tribe shall negotiate and reach agreement regarding any amendments to the TFAP, which would have an impact on this Agreement before the Tribe implements the amendment. The Tribe agrees to give the Department notice when such amendments are approved.

## **VII. RESPONSIBILITIES OF THE DEPARTMENT**

The Department shall transfer the eligible cases in two installments over the first two months of operation of the Tribe's TANF program. The details of the phase-in of the cases will be further outlined in the Operational Agreement to be established.

The Department shall assist the Tribe in helping Tribal TANF recipients apply for medical insurance coverage through the State's Basic Health Plan program.

The Department shall provide the Tribe's TANF recipients with equitable access to Medical Assistance and Food Stamps program eligibility determination and distribution services. The Department shall also provide equitable access to the benefits of the Department's ChildCare program including program eligibility and payment for childcare providers based on state law.

The Department shall provide the Tribe with a list and description of the current eligibility for State funded TANF services. If and when changes or revisions of such eligibility occur, the Department shall promptly inform the Tribe of these changes or revisions.

The Department waives Section 405 (b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that requires 90-day advance notification that the State's TANF grant, is to be reduced.

### **VIII. CONFLICT RESOLUTION**

The Department and the Tribe understand that there may be times when questions are raised by either party regarding the appropriateness of a referral, either from the Department to the Tribe or from the Tribe to the Department. The Department and the Tribe acknowledge that there may be instances in which either the Department or the Tribe has not complied with the conditions of this Agreement or that clarification is necessary to interpret provisions of this Agreement. In such instance, the Department and the Tribe shall attempt to resolve the matter through discussions. If unsuccessful, the Department and the Tribe agree to refer the matter to non-binding mediation.

Either party may request that a mediator be selected to assist in resolving any conflict or dispute. The mediator shall be jointly selected and shall be approved by both the Department and the Tribe. The cost of a mediator shall be born equally by the Department and the Tribe.

If the mediator cannot resolve the conflict or dispute then the issue shall be brought before a Disputes Board. The Disputes Board shall consist of three (3) individuals, one (1) selected by the Department, one (1) selected by the Tribe and a third party to be chosen by the first two. The Disputes Board shall review all issues, concerns and conflicts with a goal to determine acceptable solutions for both parties. The decisions of the Disputes Board shall be final and binding on both parties.

### **IX. EXECUTION, AMENDMENT, WAIVER AND TERMINATION**

This Agreement may be reviewed annually at the request of either the Tribe or the Department. This Agreement may be altered, amended or any provision may be waived by written agreement signed by both parties.

This Agreement is for three years. During this time, TANF will be reauthorized at the federal and state level. If there are changes to the federal or state TANF legislation or funding structure that significantly impact either party, each reserves the right to renegotiate this Agreement. Payments are subject to the availability of adequate federal and state funds. DSHS may renegotiate this Agreement subject to the new funding limitations and conditions by providing forty-five (45) calendar days' written notice.

This Agreement incorporates the Indian Nation and DSHS Agreement # 0082-44135 Regarding General Terms and Conditions by reference, including but is not limited to, the provisions for Termination Due to Change in Funding,

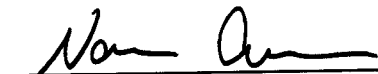
Termination for Convenience, and Termination for Default. For this Agreement, either party may terminate the Agreement by giving the other party forty-five (45) calendar days' written notice.

If the Tribe chooses to terminate or retrocede its Tribal TANF program prior to the end of its three-year plan, it agrees to provide the Department with notification at the same time that it notifies the Secretary of HHS. All future scheduled State funded payments shall be discontinued and any State MOE funds not expended or obligated on Tribal TANF activities as of termination or retrocession date shall be returned to the Department within 45 days of the termination or retrocession date.

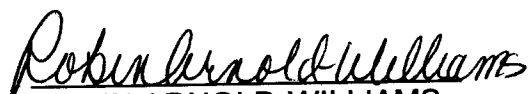
#### **X. TERM**

**THIS AGREEMENT** shall become effective when the Department and the Tribe have signed the Agreement. This Agreement shall terminate on April 30, 2008 unless extended, or terminated prior to that date, as provided herein.

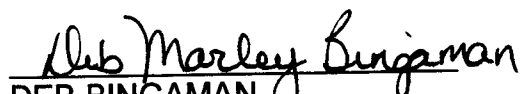
The following in their representative capacities hereby approves this Agreement.

  
NARCISCO CUNANAN  
CHAIRMAN  
Nooksack Tribe

Date 3-21-2005

  
ROBIN ARNOLD-WILLIAMS  
SECRETARY  
Department of Social & Health Services

Date 4-1-05

  
DEB BINGAMAN  
ASSISTANT SECRETARY  
Economic Services Administration

Date 3-30-05